

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ROGER STUBL,

Plaintiff,

Case No. 2:07-cv-252

v.

Honorable R. Allan Edgar

DEAN CAROLYN et al.,

Defendants.

/

REPORT AND RECOMMENDATION

Plaintiff , a former Michigan inmate, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against Dentist Dean Carolyn, Chippewa Correctional Facility (URF) Dentist Dr. (Unknown) Owen (named as Owens in Plaintiff's complaint), Marquette Branch Prison (MBP) Dentist Pam Austin, and Dental Assistant Joanne D. Clark. Plaintiff's complaint was initially dismissed by the court on January 5, 2009, for failing to state a claim. Plaintiff subsequently filed an appeal, which was granted, in part, by the Sixth Circuit. In its opinion, the Sixth Circuit affirmed this court's dismissal of Defendant Carolyn, but vacated the order with regard to the remaining Defendants. On March 31, 2011, Defendants Owens and Clark were granted summary judgment by the court, leaving only Plaintiff's claims against Dentist Pam Austin, who has never been served.

Summons were issued as to Pam Austin on December 10, 2009, and were returned unexecuted on January 22, 2010, along with a notice that Austin is no longer employed by the MDOC (docket #55). Rule 4(m) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to effect service within 120 days of filing of the complaint. *See Moncrief v.*

Stone, 961 F.2d 595, 596 (6th Cir. 1992); *Friedman v. Estate of Presser*, 929 F.2d 1151, 1155 (6th Cir. 1991). Over 120 days have elapsed since the filing of Plaintiff's complaint and Plaintiff has failed to effect service on Defendant Austin. Therefore, Plaintiff's claims against Defendant Austin are properly dismissed without prejudice for failure to prosecute.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within fourteen (14) days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR 72.3. Failure to file timely objections constitutes a waiver of any further right to appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). See also *Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley

TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: April 8, 2011